



Contract Management Solutions and its Impact on the Role of Corporate Counsel

By I-many

“A contract management solution ...provides the legal department with an invaluable tool to determine whether or not the firm is in compliance with its contracts...”

IT based contract management is a relatively new, but rapidly growing, area in the corporate IT arena. Modern contract management solutions provide software-based solutions that support the entire contract life cycle [planning/negotiations, contract creation, transaction compliance, settlement, and evaluation]. Because the lion's share of most corporate relationships are governed by the terms and conditions held in contracts, the ramifications of this type of solution resonate throughout the organization. Below we will limit our discussion to the impact on the role of the company's corporate counsel.

There are four primary areas where contract management technology clearly intersects with the role of the corporate counsel, these are:

- Contract Negotiations
- Contract Creation
- Dispute Resolution
- Audit Preparation and Defense

This document will look at each of these issues in turn.

Contract Negotiations

Prior to the outset of most corporate trade relationships there is a process where the terms of that relationship are defined and codified. The final product of this process is a contract which, when agreed to and signed by both parties, becomes the binding document between the firms. For the corporate counsel the process of negotiating a new contract or renegotiating an existing contract is a core competency that is vital to the financial and operational health of the company. Ironically, this process has changed little over the last several hundred years. It is still based on the individual skill and cunning of the parties engaged in the negotiations and utilizes information/data in an ad hoc manner when it is easily available.

With a contract management solution in place, the legal team is able to draw upon the firm's contract negotiation and performance history to increase the likelihood that the product of the negotiations will be favorable. This is possible because a fully functional contract management system will be based upon a contract repository that stores not only the firm's previous contracts but detailed records of previous contract negotiations and data on how previous contracts have performed. Further, this repository will utilize sophisticated data analysis tools to allow for easy retrieval of the relevant information.

This functionality provides the legal team with substantial information regarding what types of contracts have worked in the past and what types have not. With this information they can form a clear picture of the type of contract they

would like to see resulting from a given negotiation. With the end point known, the negotiators are in a much stronger position than when they are relying on intuition and luck alone to define the terms and conditions that will bind their firm to another.

The above said, skill and cunning are still crucial characteristics of a good negotiator. The information provided by the contract management system simply allows the negotiator to focus on attaining what is really necessary and know those areas where he/she can show flexibility.

In order to make the most of the contract management system in the negotiating process the legal team will need to develop skills in data retrieval and analysis. For while the contract repository will contain a wealth of useful information it is up to the legal team to ask the proper questions that yield information, which is most relevant to a given negotiation.

Contract Creation

The final product of the negotiation process is a contract that will be signed and witnessed by both parties and then become the binding document of the relationship. But the drafting of the contract document is in reality a legal process unto itself.

The language used in describing the agreements reached during negotiations is critical and can determine the success or failure of a contract. Thus, the art of drafting the contract document is in many ways as important as the art of negotiating the agreement itself.

The science of contract management can complement the art of the contract drafting team through the provision of relevant samples of previously approved contract text. This is possible because the contract repository effectively stores contracts both as unified documents and also as individual clauses. Thus, when the legal department is in the process of drafting a contract they can utilize the contract management system to identify and retrieve text that has been successfully employed in previous agreements. This will both expedite the contract creation process as well as reduce the risks associated with reinventing the wheel each time a new contract needs to be drafted.

Here again the legal team will need to utilize certain data management skills in order to effectively manipulate the contract repository. But the investment in acquiring these skills will be more than paid back by the increased efficiency and accuracy associated with leveraging existing and effective contract language.

Dispute Resolution

For an almost infinite number of reasons disputes will arise among the parties of a contract. These disputes will often be the result of operational failures or miscommunication between the firms. They will also need to be resolved based

on the formal terms and conditions of the relevant contracts. While relatively small operational disputes are often resolved between the effected functional units without resort to legal action more serious issues are the purview of corporate counsel.

When a dispute is elevated to corporate counsel the legal team needs to quickly determine the merits of the case as well as the best response of the firm. This requires that they understand both what actually transpired that led to the dispute as well as the terms and conditions of the relevant agreements. While on the surface this appears to be a logical and relative simple collection of tasks – in practice it is often anything but.

While many firms maintain enterprise resource planning tools that gather large amounts of transaction data, these systems are not designed to relate that data to a given contract. Thus, when a dispute arises it is very difficult to actually determine whether what was done was in compliance with the contract or not. The large number of contracts maintained by a major corporation compounds this issue.

A contract management solution that is integrated with the firm's ERP and supply chain management software provides the legal department with an invaluable tool to determine whether or not the firm is in compliance with its contracts or whether its trade partner is in violation of those same agreements. The contract management solution relates specific transactional data to a given contract thus opening a window on contract compliance.

This functionality will help the legal team quickly determine whether or not it should contest a dispute. Further, if the firm believes it is in the right, the contract management system gives the legal department the necessary information to effectively argue its position with its counterparts in the other firm. The ability to quickly generate this information is a key advantage in dispute resolution scenarios and should be effectively leveraged by the legal team.

In order to make full use of the contract management system's functionality the legal team should develop a clear understanding of the types of transactional data available and how that data is related to the terms and conditions of the firm's contracts. With this understanding and a solid knowledge of the business' processes they will be able to generate the appropriate queries for the contract management system. By asking the right questions the legal team will obtain the information needed to successfully resolve most business disputes that arise.

Audit Preparation and Defense

Recent events in the United States and Europe have raised the issue of financial audits to a new level of importance for companies throughout the world. In the past, audits were almost the sole responsibility of the Chief Financial Officer and his/her accounting team. The situations at Enron and WorldCom in the US and France Telecom in Europe have meant that the legal departments are now actively involved in preparing for audits as well as defending the results of previous audits.

In the US the federal government has recently passed legislation (The Sarbanes-Oxley Act of 2002) that stipulates in detail the manner in which a firm listed on a US exchange must conduct and report its financial information. It also clearly outlines who may and may not conduct and/or oversee the auditing of the firm's financial information. The legal department of the firm is responsible for ensuring that its auditing activities are in compliance with this law. When the firm is challenged on its audits it is also the legal department's responsibility to defend it.

The contract management system provides a very useful tool for both conducting the audits in the first place as well as defending the results. From the perspective of legal counsel the contract management system's creation of a detailed 'paper trail' regarding its relationship with every trade partner and the fact that this trail is linked with transactional data provide useful supporting evidence when the firm is challenged. Further, the very fact that the firm has invested in this type of functionality infers its commitment to good governance and transparency and thus supports its position in any audit-related contests.

While the contract management system is not designed as an auditing tool, its functionality supports those conducting the audits or the barristers defending the results. The legal team involved in these actions should be able to utilize the information stored in the contract management system's repository to demonstrate that the actions of the firm are fully above board and in compliance with the relevant local laws.

Conclusion

The article presented above has attempted to demonstrate some of the ways in which a contract management system can be utilized by the legal counsel of a firm to both improve the efficiency of their practice and their effectiveness in negotiations and dispute resolutions. It must be noted though that while the potential for these benefits is quite real, there is a challenge to be met. That challenge relates to the need for the legal team to acquire the skills necessary to effectively utilize the contract management system. For most corporations today, this is a challenge that cannot afford to be avoided.

About I-many

I-many (NASDAQ: IMNY) is the leading provider of enterprise contract management and trade management solutions. The company's solutions automate contracting processes, ensure contract compliance and track contract performance resulting in higher contract revenues and reduced operating costs. More than 250 life science, consumer goods, food service and manufacturing companies use I-many solutions. For more information, visit the company at <http://www.imany.com>.

Worldwide Headquarters:

I-many, Inc.
12th Floor
399 Thornall Street
Edison, New Jersey 08837
ph 800 832 0228

London Office:

I-many, Inc.
21 Whitefriars Street
London
EC4Y 8JJ
ph +44 (0)20 7936 2828